



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

MEMORANDUM

To: Chairperson and Authority Members

Date: January 25, 2010

From: Mehdi Morshed, Executive Director

Subject: Agenda Item 8 - 2009-10 High Speed Train Legislation

Discussion

The Authority's staff regularly presents an action item summarizing new high-speed train legislation introduced in the 2009-10 Legislative Session. In 2009, the first year of the legislative session, ten (10) bills were identified at one time or another as directly affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations. The initial legislative report anticipated that the Authority could be asked for its views, if any, on the various measures as the new bills were scheduled for legislative policy and fiscal hearings and started to move through the legislative process. The April 2009 and subsequent monthly reports highlighted the provisions of the various bills and recommended to the Board formal positions on several bills and that the Board monitor the status and progress of the other identified bills. After discussion at its May meeting, the Board approved the staff report's recommended positions and action on several bills and asked that staff keep board members informed of important changes and developments in the language or status of the bills. The monthly legislative report provides this information.

The Legislature concluded its work on legislation for 2009 on September 11th and recessed the regular legislative session at that time. The 2009-10 session reconvened on January 4, 2010 and the Legislature resumed work on holdover bills that were introduced in 2009 and that remain viable. Several deadlines loom in January and February with respect to the holdover bills and new legislative proposals under development:

- January 22: last day for committees to hear and report to the Floor bills introduced in their house in 2009. Last day to submit bill drafting requests to Legislative Counsel for 2010.
- January 31: Last day for each house to pass bills introduced in its house in 2009. (Bills failing to move out of the house of origin are "dead".)
- February 19: Last day to introduce new bills for 2010.

An updated and revised summary of still-pending legislation affecting the HSRA is presented in this report. The “current approved positions” noted for each bill are those positions formally adopted by the Board at its prior meetings.

Recommendation:

Authority staff propose that the Authority continue its prior approved actions regarding positions on specific high-speed train legislation and direct the Executive Director to communicate any Board positions to the appropriate committees and respective authors of the bills as necessary. If there are no proposed changes, then no further Board action is necessary:

1. **AB 153 (Ma)** – *Operations and duties of the High Speed Rail Authority - Successor legislation to the Authority-sponsored AB 981 (Ma, 2007, later used for other issues).* The bill deletes language made obsolete by the passage of AB 3034 (Prop. 1A) last year regarding a financial plan and makes several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, makes a technical reference that the Board is the “governing authority” of the Authority in cases of eminent domain, clarifies that the Authority’s existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updates provisions requiring the Authority to prepare construction plans for the HST system). The bill also provides that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

Bill history/status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09; approved by Assembly 53-16 on 5/11/09. Sent to Senate; double-referred to Transportation and Housing and Judiciary Committees. Set for hearing in Transportation and Housing on 6/23/09; put over/postponed to later hearing by Committee, with proposed committee amendments presented to the author. No new hearing scheduled; may be heard in 2010. Two-year bill.

Current approved position: As sponsor of the bill, request that author cease further efforts to secure passage of the measure at this time. (July 20, 2009 letter sent to author requesting this.)

2. **AB 289 (Galgiani)** – *Requires that the Authority use the proceeds of the Proposition 1A high speed rail bonds to match federal high-speed rail stimulus funds to the extent possible. Further author’s amendments are pending that would authorize the Governor to appoint five exempt employees to the Authority who would serve as deputy directors of the Authority.*

Re current contents: Proposition 1A (AB 3034), the Safe, Reliable High-Speed Passenger Train Act for the 21st Century, was approved by state voters on November 4, 2008. Prop. 1A controls the expenditure of the bond funds and imposes conditions on the use of the funds for development and construction of the high-speed train (HST) project, including that no more than 50% of the construction cost in any corridor or usable segment can come from the bond funds. Prop. 1A also requires the Authority to pursue and obtain other private and public funding, including federal funding for the HST project. Separately, the revised 2009-10 Budget Act appropriation for the Authority provides that the state appropriation for the Authority's operating and project expenses may be reduced and replaced (substituted) by an equivalent amount of any federal stimulus funds made available through the American Recovery and Reinvestment Act (ARRA).

The bill directs the Authority to seek federal ARRA funding by matching such funds with state bond funds. The bill requires the Authority, to the extent possible, to use the Prop. 1A bond funds to match federal high speed rail grant funds available under the ARRA.

Re pending amendments: The proposed language addition would give the Governor the power to appoint five additional employees to the Authority, who would be exempt from civil service, to serve as deputy directors of the Authority at the pleasure of the executive director. The amendments state that the additional staff are necessary for high-speed rail development activities related to the receipt of federal American Recovery and Reinvestment Act (ARRA) funds.

Bill history/status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; approved by Assembly 72-3 on 5/18/09. Sent to Senate and referred to Senate Environmental Quality Committee; hearing pending. Author prepared and added amendments on 8/17/09 to delete former contents and change subject matter to requiring state action relative to matching federal ARRA high-speed rail stimulus funding. Re-referred to Senate Committee on Rules.

Current approved position: Support

3. **AB 1375 (Galgiani)** – *Department of High Speed Trains. Creates a Department of High-Speed Trains within the Business, Transportation and Housing Agency to implement the policies of the High-Speed Rail Authority and perform the daily tasks of building the high-speed train project and implementing the HST system.* The Authority would continue as the policy and oversight body of the HST project and exercise those powers and duties described in Proposition 1A. The bill would transfer certain of the existing powers and responsibilities of the Authority to the department and add new duties, including the annual submission of a 6-year high-speed train capital improvement program and a separate progress report to the Legislature. The Governor would appoint the department director and the Governor could appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The bill would extend the Authority's/departments' rights-of-way and property acquisition and management authority to parallel that exercised by Caltrans and would authorize the employment of in-house legal counsel.

The bill was amended and reactivated on 1/15/10 to facilitate the measure's consideration by the Assembly and potential movement to the Senate. The new amendments switched from the Authority to the Governor responsibility for appointing the executive director of the Authority and placed various Proposition 1A-related functions (day-to-day activities) under the new department rather than the Authority.

Bill history/status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee. (Hearing postponed by Committee; Pending in Appropriations Committee at request of Assembly Speaker. Approved by Assembly Appropriations Committee on 1/21/10 and referred to the Assembly Floor.

Current approved position: Monitor

4. **SB 409 (Ducheny)** – *Creates a Department of Railroads in the Business, Transportation and Housing Agency, responsible for several current state rail programs.* The bill would combine in a single new agency several state rail functions and operations currently residing in other agencies: Caltrans' intercity rail (AMTRAK) program, the Public Utilities Commission's and Caltrans' goods movement (freight) rail programs, and the high-speed train (HST) program/project. The new department would also include the state's railroad grade separation programs and be responsible for the coordination of regional planning efforts for rail transportation. The department would be the only agency eligible to apply for and receive grant and loan funds from the federal government

or other sources for intercity rail, high-speed rail, or freight rail purposes. The High Speed Rail Authority would become a division of the new Department of Railroads. The Department of Railroads would be under the control of a new Director of Railroads.

The position of Executive Director of the Authority would be eliminated. Instead, the Authority would be administered by a division chief who would be nominated by and report to the new Director of Railroads, and be approved by the Authority. The Director of Railroads would be nominated by the Governor and be subject to Senate confirmation, would serve as a member of the board of the Authority, and would permanently chair the Authority and preside at all its meetings. (The relationships and interaction among the Authority's new division chief, the new Director of Railroads and the Board of the Authority are not clearly spelled out and require clarification and further development.) The bill would require that a task force composed of the Director of Transportation, Director of Railroads and a Public Utilities Commission representative be formed to resolve issues of overlapping jurisdiction of the agencies, but it is not clear whether the task force would have sufficient authority to implement any additional operational, administrative or structural changes or whether subsequent legislation would be required.

Bill history/status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. Rule waiver granted 5/28/09 to allow bill to be heard in policy committee after bill action deadlines. Approved by Senate Transportation and Housing Committee 10-0 on 6/9/09. Referred to Senate Appropriations Committee; set for hearing 7/23/09 pending rule waiver approval. Waiver granted; bill heard and placed on Senate Appropriations Committee Suspense File on 7/23/09. Approved by Senate Appropriations 13-0 on 8/4/09; pending on Senate Floor.

Current approved position: Oppose (Letter sent to author July 9, 2009.)

5. **SB 455 (Lowenthal)** – *Operations and duties of the High Speed Rail Authority. Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection criteria and requires Senate confirmation of some Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.* The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the

general property management scheme administered by the Department of General Services for other agencies.

The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, including contract change orders, accompanied by a written report explaining the changes.

Bill history/status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; approved by Senate Appropriations Committee 9-4 on 5/27/09; Approved by Senate 32-5 on 6/2/09. Sent to Assembly. Approved by Assembly Transportation Committee 10-4 on 6/29/09; approved by Assembly Appropriations Committee 11-5 on 7/15/09. Referred to Assembly Floor Third Reading File; placed on Inactive File on 7/24/09.

Current approved position: Monitor

AMENDED IN ASSEMBLY JANUARY 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1375

Introduced by Assembly Member Galgiani

February 27, 2009

An act to repeal and add Division 19.5 (commencing with Section 185000) of the Public Utilities Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1375, as amended, Galgiani. High-speed rail.

Existing law, the California High-Speed Train Act, creates the High-Speed Rail Authority to develop and implement a high-speed train system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.

This bill would revise and recast these provisions by repealing and reenacting the California High-Speed Train Act. The bill would continue the High-Speed Rail Authority in existence to make policy decisions relative to implementation of high-speed rail consistent with Proposition 1A. The bill would create the Department of High-Speed Trains within the Business, Transportation and Housing Agency, which would implement those policies. The bill would transfer certain of the existing powers and responsibilities of the authority to the department; and would specify additional powers and duties of the authority and department relative to implementation of the high-speed rail project, including the annual submission of a 6-year high-speed train capital improvement

program and progress report to the Legislature. The director of the department would be appointed by the ~~authority~~ Governor, who would serve at the pleasure of the authority, and the Governor would be authorized to appoint up to 10 executive employees of the department who would be exempt from civil service and serve at the pleasure of the director. The bill would provide for acquisition and disposition by the department of rights-of-way for the high-speed rail project. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to do all of
2 the following:

3 (1) Further the transportation system of the state through the
4 successful development and construction of the 800-mile
5 high-speed train system described in Proposition 1A, approved by
6 the voters on November 4, 2008.

7 (2) Protect the state's interests and provide for the exercise of
8 continuing oversight of the funds to be invested in the high-speed
9 train project following voter approval of Proposition 1A.

10 (3) Ensure that an adequate public forum maintains the
11 transparency of the development of the high-speed train project.

12 (4) Provide an efficient governmental structure for the
13 development of high-speed train operations in the state.

14 (b) This act continues in existence the High-Speed Rail
15 Authority, creates a new Department of High-Speed Trains within
16 the Business, Transportation and Housing Agency, apportions
17 between the authority and the new department existing as well as
18 new powers, duties, rights, and obligations, and defines the
19 relationship between the authority and the new department.

20 SEC. 2. Division 19.5 (commencing with Section 185000) of
21 the Public Utilities Code is repealed.

22 SEC. 3. Division 19.5 (commencing with Section 185000) is
23 added to the Public Utilities Code, to read:

DIVISION 19.5. CALIFORNIA HIGH-SPEED RAIL
SERVICE

CHAPTER 1. GENERAL PROVISIONS, FINDINGS, AND DEFINITIONS

185000. This division shall be known, and may be cited, as the California High-Speed Rail Act.

185002. The Legislature hereby finds and declares all of the following:

(a) California, over the past decades, has built an extensive network of freeways and airports to meet the state's growing transportation needs.

(b) These facilities are not adequate to meet the mobility needs of the current population.

(c) The population of the state and the travel demands of its citizens are expected to continue to grow at a rapid rate.

(d) The cost of expanding the current network of highways and airports fully to meet current and future transportation needs is prohibitive, and a total expansion strategy would be detrimental to air quality.

(e) Intercity train service, when coordinated with urban transit and airports, is an efficient, practical, and less polluting transportation mode that can fill the gap between future demand and present capacity.

(f) Advances in rail and train technologies have allowed intercity train systems in Europe and Japan to attain speeds of up to 220 miles per hour and compete effectively with air travel for trips in the 200- to 500-mile range.

(g) Development of a high-speed train system is a necessary and viable alternative to automobile and air travel in the state.

(h) In order for the state to have a comprehensive network of high-speed intercity train systems by the year 2020, similar to California's former freeway plan, it is necessary to designate an entity with stable and predictable funding sources to implement the plan.

(i) Utilizing existing human and manufacturing resources to build a large network of high-speed trains will generate jobs and economic growth for today's population and produce a transportation network for future generations.

(j) Upon confirmation of the need and costs by detailed studies, the private sector, together with the state, can build and operate new high-speed intercity train systems utilizing private and public financing.

185004. As used in this division, unless the context requires otherwise, the following terms have the following meanings:

(a) “Authority” means the High-Speed Rail Authority. The members of the authority constitute the board of the authority.

(b) “Department” means the Department of High-Speed Trains.

(c) “High-speed train” means intercity passenger train service that utilizes an alignment and technology that makes it capable of sustained speeds of 200 miles per hour or greater.

(d) “Secretary” means the Secretary of Business, Transportation and Housing.

CHAPTER 2. THE HIGH-SPEED RAIL AUTHORITY

Article 1. Members of the Authority

185110. (a) The High-Speed Rail Authority in state government is hereby continued in existence.

(b) (1) The authority is composed of nine members as follows:

(A) Five members appointed by the Governor.

(B) Two members appointed by the Senate Committee on Rules.

(C) Two members appointed by the Speaker of the Assembly.

(2) For the purposes of making appointments to the authority, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall take into consideration geographical diversity to ensure that all regions of the state are adequately represented.

(c) Members of the authority shall hold office for terms of four years, and until their successors are appointed. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) The term of a member shall expire on December 31 of the fourth year of the member’s term.

(e) Members of the authority are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) From among its members, the authority shall elect a chairperson, who shall preside at all meetings of the authority, and

1 a vice chairperson to preside in the absence of the chairperson.
2 The chairperson shall serve a term of one year.

3 (g) Five members of the authority constitute a quorum for taking
4 any action by the authority.

5 185112. (a) Each member of the authority shall receive
6 compensation of one hundred dollars (\$100) for each day that the
7 member is attending to the business of the authority, but shall not
8 receive more than five hundred dollars (\$500) in any calendar
9 month.

10 (b) Members of the authority shall be reimbursed for their actual
11 travel expenses incurred in attending to the business of the
12 authority.

13 ~~185114. (a) The authority shall appoint the director of the~~
14 ~~department, who shall also serve as the authority's executive~~
15 ~~director, who shall serve at the pleasure of the authority, to~~
16 ~~administer the affairs of the authority and of the department.~~

17 ~~(b) The director is exempt from civil service.~~

18 ~~(c) The director may appoint necessary staff to carry out the~~
19 ~~provisions of this division.~~

20 21 Article 2. Policies of the Authority

22
23 185120. In consultation with the department, the authority shall
24 establish policies directing the development and implementation
25 of intercity high-speed train service that is fully integrated with
26 the state's existing intercity rail and bus network, consisting of
27 interlinked conventional and high-speed train lines and associated
28 feeder buses. The intercity network in turn shall be fully
29 coordinated and connected with commuter train lines and urban
30 transit lines developed by local agencies, as well as other transit
31 services, through the use of common station facilities whenever
32 possible. The department shall implement those policies.

33 185122. (a) The authority shall establish an independent peer
34 review group for the purpose of reviewing the planning,
35 engineering, financing, and other elements of the authority's plans
36 and issuing an analysis of appropriateness and accuracy of the
37 authority's assumptions and an analysis of the viability of the
38 authority's financing plan, including the funding plan for each
39 corridor required pursuant to subdivision (b) of Section 2704.08
40 of the Streets and Highways Code.

(b) The peer review group shall include all of the following:

(1) Two individuals with experience in the construction or operation of high-speed trains in Europe, Asia, or both, designated by the Treasurer.

(2) Two individuals, one with experience in engineering and construction of high-speed trains and one with experience in project finance, designated by the Controller.

(3) One representative from a financial services or financial consulting firm who shall not have been a contractor or subcontractor of the authority for the previous three years, designated by the Director of Finance.

(4) One representative with experience in environmental planning, designated by the secretary.

(5) Two expert representatives from agencies providing intercity or commuter passenger train services in California, designated by the secretary.

(c) The peer review group shall evaluate the authority's funding plans and prepare its independent judgment as to the feasibility and reasonableness of the plans, appropriateness of assumptions, analyses, and estimates, and any other observations or evaluations it deems necessary.

(d) The authority and the department shall provide the peer review group any and all information that the peer review group may request to carry out its responsibilities.

(e) The peer review group shall report its findings and conclusions to the Legislature no later than 60 days after receiving the plans.

Article 3. Powers, Duties, and Responsibilities of the Authority

185130. The authority has ~~those powers, duties, and responsibilities delegated to it pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act of 2008 (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code).~~ In addition, and subject to those powers, duties, and responsibilities, the authority has the following powers, duties, and responsibilities:

(a) The authority shall select the routes of the high-speed train system.

1 ~~(b) The authority shall determine the priority of construction of~~
2 ~~the various segments of the high-speed train system.~~

3 ~~(e)~~

4 (b) The authority shall serve as the governing body of the
5 department, within the meaning of Section 1245.210 of the Code
6 of Civil Procedure, for purposes of the adoption of resolutions of
7 necessity.

8 ~~(d)~~

9 (c) The authority shall advise the secretary and the director
10 concerning high-speed rail matters, *which advice shall be*
11 *considered by the department in exercising its powers and duties*
12 *pursuant to this division.*

13 ~~(e)~~

14 (d) The authority shall adopt criteria for the award of franchises.

15 ~~(f)~~

16 (e) The authority shall set fares or establish guidelines for the
17 setting of fares.

18 185132. (a) The authority shall adopt and submit to the
19 Legislature and the Governor, not later than October 1 each year,
20 a high-speed train program. The program shall cover a period of
21 six fiscal years, beginning July 1 of the year following the year it
22 is adopted, and shall be a statement of intent by the department to
23 request funding in the annual Budget Act for the following six
24 years.

25 (b) The high-speed train program shall include a listing of all
26 capital improvement projects that are expected to require
27 appropriation in the annual Budget Act, including state, federal,
28 local, and private funds, during the following six fiscal years.

29 (c) For each segment, the program shall specify the expenditure
30 amount and the expenditure year for each of the following project
31 components:

32 (1) Completion of all permits and environmental studies.

33 (2) Preparation of plans, specifications, and estimates.

34 (3) The acquisition of rights-of-way, including, but not limited
35 to, support activities.

36 (4) Construction and construction management and engineering,
37 including surveys and inspection.

CHAPTER 3. DEPARTMENT OF HIGH-SPEED TRAINS

Article 1. Organization of the Department

185210. There is in the Business, Transportation and Housing Agency a Department of High-Speed Trains.

185211. The department is under the control of a director known as the Director of High-Speed Trains.

185212. The director shall be appointed by the ~~authority~~ Governor, and hold office at the pleasure of the authority ~~as provided in Section 185114.~~

185213. The director shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided by law.

185214. The director shall organize the department from time to time in the manner the director deems necessary to properly segregate and conduct the work of the department. The director may organize the department into as many divisions as, in the director's judgment, will provide for the efficient administration of the high-speed train project and planning, construction, and operation of the high-speed train system.

185215. (a) For purposes of overseeing the ongoing work of the department, the organization of the department may include provision for up to 10 employees exempt from civil service who shall constitute the executive staff of the department, who shall be appointed by the Governor, and who shall serve at the pleasure of the director.

(b) Notwithstanding Sections 19816 and 19825 of the Government Code, the compensation of key exempt management, including the director and the exempt positions described in subdivision (a), shall be established by the authority board in amounts that are reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications.

(c) (1) To determine the compensation for the positions described in this section, the authority shall cause to be conducted, through the use of independent outside advisors, salary surveys of both of the following:

(A) Other state, regional, and local transportation agencies that are most comparable to the department.

1 (B) Other relevant labor pools.

2 (2) The salaries so set by the board shall not exceed the highest
3 comparable salary for a position of that type, as determined by the
4 survey.

5 (d) The Department of Personnel Administration shall review
6 the methodology used in these salary surveys.

7 185216. The Governor, the secretary, and the department may
8 enter into any agreements, execute any documents, establish and
9 manage any accounts and deposits, and take any other action that
10 may be appropriate, in accordance with federal law and rules and
11 regulations, to receive and expend funds from the federal
12 government in connection with mass transportation programs and
13 projects for which federal funds are available.

14 185217. The department shall prepare and submit to the
15 Legislature and to the authority board an annual report, no later
16 than December 1 of each year. The report shall include a
17 description of the progress made and the high-speed train program
18 adopted by the authority.

19 185218. (a) The authorization and responsibility for planning,
20 construction, and operation of high-speed passenger train service
21 at speeds exceeding 125 miles per hour in this state is exclusively
22 granted to the department.

23 (b) Except as provided in paragraph (a), nothing in this chapter
24 precludes other local, regional, or state agencies from exercising
25 powers provided by law with regard to planning or operating, or
26 both, passenger rail service.

27
28 Article 2. Powers and Duties of the Department
29

30 185220. *The department shall have those powers, duties, and*
31 *responsibilities delegated to the authority pursuant to the Safe,*
32 *Reliable High-Speed Passenger Train Bond Act of 2008 (Chapter*
33 *20 (commencing with Section 2704) of Division 3 of the Streets*
34 *and Highways Code), except as provided otherwise in Article 3*
35 *(commencing with Section 185130) of Chapter 2. In that regard*
36 *and to that extent, the department shall be the successor of the*
37 *authority pursuant to subdivision (b) of Section 2704.01 of the*
38 *Streets and Highways Code. Subject to the other provisions of this*
39 *division, and the provisions of the Safe, Reliable High-Speed*
40 *Passenger Train Bond Act of 2008 (Chapter 20 (commencing with*

1 ~~Section 2704) of Division 3 of the Streets and Highways Code);~~
2 the department shall have the powers and duties to do the
3 following:

4 (a) Conduct engineering and other studies related to the selection
5 and acquisition of rights-of-way and the selection of a franchisee,
6 including, but not limited to, environmental impact studies,
7 socioeconomic impact studies, and financial feasibility studies.

8 (b) Evaluate alternative high-speed train technologies, systems
9 and operators, and select an appropriate high-speed train system.

10 (c) Award franchises consistent with criteria adopted by the
11 authority.

12 (d) Accept grants, fees, and allocations from the state, from
13 political subdivisions of the state, or from the federal government,
14 foreign governments, and private sources.

15 (e) Select a proposed franchisee, a proposed route, and proposed
16 terminal sites.

17 (f) Enter into contracts with public and private entities for the
18 preparation of the plan.

19 (g) Prepare a detailed financing plan, including any necessary
20 taxes, fees, or bonds to pay for the construction of the high-speed
21 train network.

22 (h) Develop a proposed high-speed train financial plan, including
23 necessary taxes, bonds, or both, or other indebtedness, and submit
24 the plan to the Legislature and to the Governor.

25 (i) Keep the public informed of its activities.

26 (j) Enter into contracts with private or public entities, including
27 contracts for the design, construction, and operation of high-speed
28 trains. The contracts may be separated into individual tasks or
29 segments or may include all tasks and segments, including any
30 combination of one or more of such tasks as design, build, finance,
31 operate, and maintain.

32 (k) Acquire rights-of-way through purchase or eminent domain.

33 (l) Subject to approval by the authority board, issue debt, secured
34 by pledges of state funds, federal grants, or project revenues. The
35 pledge of state funds shall be limited to those funds expressly
36 authorized by statute or voter-approved initiatives.

37 (m) Enter into cooperative or joint development agreements
38 with local governments or private entities.

39 (n) Relocate highways and utilities.

1 (o) Plan, construct, and operate the high-speed train system, or
2 enter into contracts for the planning, construction, or operation of
3 the system, including the acquisition of equipment, including
4 rolling stock, necessary for the operation of the system.

5 (p) Acquire, sell, and lease passenger rail rolling stock, power
6 units, and associated equipment.

7 (q) Acquire, lease, design, construct, and improve track lines
8 and related facilities, and contract with the private sector for the
9 design, improvement, or construction of track lines and related
10 facilities.

11 185222. (a) Notwithstanding any other provision of law, and
12 subject to approval by the authority board, for any project along
13 the high-speed rail network, the department may contract with the
14 Department of Transportation to perform project design and
15 engineering services, including construction inspection services.

16 (b) For purposes of this section, “project design and engineering
17 services, including construction inspection services” means
18 preliminary engineering, planning, prebid services, right-of-way
19 acquisitions, preparation of environmental documents, preparation
20 of plans, specifications, and estimates, construction inspection
21 including surveying and materials testing, quality control inspection
22 including highway and utility relocation, and grade separations.

23
24 Article 3. Rights-of-Way
25

26 185230. (a) If the department determines that real property or
27 an interest therein, previously or hereafter acquired by the state
28 for high-speed rail purposes, is no longer necessary for those
29 purposes, the department may sell, contract to sell, sell by trust
30 deed, or exchange the real property or interest therein in the manner
31 and upon terms, standards, and conditions established by the
32 authority. The payment period in a contract of sale or sale by trust
33 deed shall not extend longer than 10 years from the time the
34 contract of sale or trust deed is executed, and a transaction
35 involving a contract of sale or sale by trust deed to private parties
36 shall require a downpayment of at least 30 percent of the purchase
37 price.

38 (b) A conveyance under this section shall be approved by the
39 authority and shall be executed on behalf of the state by the director
40 and the purchase price shall be paid into the State Treasury to the

1 credit of any fund, available to the department for high-speed rail
2 purposes, that the authority designates.

3 (c) Any real property or interest therein may in like manner be
4 exchanged, either as whole or part consideration, for any other
5 real property or interest therein as needed for high-speed rail
6 purposes.

7 185232. The director may sell or lease excess right-of-way
8 parcels to municipalities or other local agencies for public purposes,
9 and may accept as all or part of the consideration for the sale or
10 lease any substantial benefits the state will derive from the
11 municipality or other local agency's undertaking maintenance or
12 landscaping costs that would otherwise be the obligation of the
13 state.

14 185234. The director may lease nonoperating right-of-way
15 areas to municipalities or other local agencies for public purposes,
16 and may contribute toward the cost of developing local parks and
17 other recreational facilities on those areas. The director may accept
18 as all or part of the consideration for the lease or for the state
19 contribution any substantial benefits the state will derive from the
20 municipality or other local agency's undertaking maintenance or
21 landscaping costs that would otherwise be the obligation of the
22 state. Those leases shall contain a provision that whenever the
23 leased land is needed for high-speed rail operating purposes the
24 lease shall terminate. The department is authorized to classify
25 portions of high-speed rail rights-of-way as nonoperating.

26 185236. (a) The department may acquire, by purchase, lease,
27 or eminent domain, any property necessary for the development
28 and implementation of the state's high-speed train program. The
29 power of eminent domain shall be exercised in accordance with
30 Title 7 (commencing with Section 1230.010) of Part 3 of the Code
31 of Civil Procedure.

32 (b) The authority constitutes the department's "governing body"
33 within the meaning of Section 1245.210 of the Code of Civil
34 Procedure, for purposes of the adoption of resolutions of necessity.

35 (c) To the extent that the activities authorized by subdivision
36 (a) exceed the capacity of the department's existing work force,
37 the department may contract with qualified individuals or firms
38 for engineering, surveying, and related technical services in
39 exercising its authority pursuant to subdivision (a).

CHAPTER 4. LEGAL MATTERS

185300. The department may employ its own legal staff or contract with other state agencies for legal services, or both. The department's legal counsel may represent the authority and the department in any judicial proceeding.

185302. Any legal or equitable action brought against the authority or the department shall be brought in a court of competent jurisdiction in the County of Sacramento. For purposes of this section, subdivision (1) of Section 401 of the Code of Civil Procedure does not apply.

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AMENDED IN SENATE JANUARY 26, 2010

AMENDED IN SENATE MAY 21, 2009

SENATE BILL

No. 409

Introduced by Senator Ducheny
(Coauthor: Assembly Member Torres)

February 26, 2009

~~An act to add Part 5.1 (commencing with Section 14460) to Division 3 of Title 2 of the Government Code, and to amend Section 185020 of, and to repeal Section 185024 of, the Public Utilities Code, relating to transportation. An act to amend Section 13975 of, and to add Chapter 2 (commencing with Section 13985) to Part 4.5 of Division 3 of Title 2 of, the Government Code, and to amend Section 185020 of, and to add Section 185025 to, the Public Utilities Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 409, as amended, Ducheny. ~~Department of Railroads. Passenger rail programs: strategic planning.~~

Existing law creates the Department of Transportation in the Business, Transportation and Housing Agency, with various powers and duties relative to the intercity passenger rail program, among other transportation programs. Existing law creates in state government the High-Speed Rail Authority, with various powers and duties relative to development and implementation of a high-speed passenger train system. The authority has 9 members, 5 appointed by the Governor and 4 appointed by the Legislature. Existing law also creates in state government the California Transportation Commission, with various powers and duties relative to programming of transportation capital projects and assisting the Secretary of Business, Transportation and Housing in formulating state transportation policies.

This bill would place the High-Speed Rail Authority within the Business, Transportation and Housing Agency. The bill would require the 5 members of the authority appointed by the Governor to be appointed with the advice and consent of the Senate. The bill would require the authority to annually submit a funding plan to the California Transportation Commission for approval, identifying the need for investments during the fiscal year and the amount of bond sales necessary to accommodate those investments.

This bill would require the Business, Transportation and Housing Agency to prepare a 5-year Strategic Rail Connectivity Plan for the state, the focus of which would be to identify, with a statewide emphasis, opportunities for passenger rail system improvements and linkages. The plan would be required to include desirable linkages and feeder opportunities between high-speed and conventional intercity rail, commuter rail, and rail transit, and to identify the coordination in planning and the capital investments necessary in that regard. The plan would also be required to identify future right-of-way needs of passenger rail lines in connection with state and local highway system improvements in order to accommodate future rail system improvements. The plan would be developed in consultation with transportation planning agencies and the agencies and entities responsible for the various rail and highway systems. The plan would initially be submitted to the California Transportation Commission for approval on September 1, 2011, and every 5 years thereafter. Upon approval of the plan, the commission, for each transportation project subject to commission approval and implicated by the plan, would be required to make a determination that the project is consistent with the plan. The bill would also provide that the commission, for good cause, may approve a project that is not consistent with the plan, subject to a waiver granted by the Secretary of Business, Transportation and Housing.

~~Existing law creates the Department of Transportation in the Business, Transportation and Housing Agency, with various powers and duties relative to the intercity rail passenger program, among other transportation programs. Existing law creates the High-Speed Rail Authority, with various powers and duties relative to development and implementation of a high-speed passenger train system. Existing law creates the Public Utilities Commission, with various powers and duties relative to railroads, among other responsibilities.~~

~~This bill would create the Department of Railroads in the Business, Transportation and Housing Agency, and create the positions of director~~

~~and deputy director within the department, to be appointed by the Governor, as specified. The director would be subject to Senate confirmation. The bill would transfer to the department responsibility for various state railroad programs currently administered by the above-referenced agencies. The bill would specify new duties of the department relative to an analysis of the state's freight rail transportation system. The bill would provide that the department shall be the only state agency eligible to apply for and receive grant and loan funds from the federal government for intercity rail, high-speed rail, or freight rail purposes. The bill would require the Secretary of Business, Transportation and Housing to convene a joint task force cochaired by the Director of Transportation, the Director of Railroads, and a representative of the Public Utilities Commission for the purpose of resolving issues relative to overlapping jurisdiction of the agencies.~~

~~Existing law provides for the Governor to appoint 5 members of the High-Speed Rail Authority. Existing law provides for the authority to elect a chairperson from among its members and to appoint an executive director.~~

~~This bill would revise these provisions by requiring one of these appointees to be the Director of Railroads, who would be subject to Senate confirmation. The Director of Railroads would serve as the chairperson of the authority. The bill would reconstitute the authority as a division of the Department of Railroads, with the chief of the division to be nominated by the Director of Railroads and approved by the authority, and would delete the provision for an executive director.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 13975 of the Government Code is
2 amended to read:
3 13975. The Business and Transportation Agency in state
4 government is hereby renamed the Business, Transportation and
5 Housing Agency. The agency consists of the State Department of
6 Alcoholic Beverage Control, the Department of the California
7 Highway Patrol, the Department of Corporations, the Department
8 of Housing and Community Development, the Department of
9 Motor Vehicles, the Department of Real Estate, the Department
10 of Transportation, *the High-Speed Rail Authority*, the Department

1 of Financial Institutions, the Department of Managed Health Care,
2 and the Board of Pilot Commissioners for the Bays of San
3 Francisco, San Pablo, and Suisun; and the California Housing
4 Finance Agency is also located within the Business, Transportation
5 and Housing Agency, as specified in Division 31 (commencing
6 with Section 50000) of the Health and Safety Code.

7 *SEC. 2. Chapter 2 (commencing with Section 13985) is added*
8 *to Part 4.5 of Division 3 of Title 2 of the Government Code, to*
9 *read:*

10
11 *CHAPTER 2. STRATEGIC RAIL CONNECTIVITY PLAN*
12

13 *13985. (a) The agency shall be responsible for preparation*
14 *of a five-year Strategic Rail Connectivity Plan for the state. The*
15 *focus of the strategic plan shall be to identify, with a statewide*
16 *emphasis, those opportunities for passenger rail system*
17 *improvements and linkages that otherwise are likely to be missed,*
18 *or assigned a relative lower priority, by implementing agencies*
19 *because of the natural focus of those agencies on the specific rail*
20 *systems under their respective jurisdictions. In that regard, the*
21 *strategic plan shall include desirable linkages and feeder*
22 *opportunities between various passenger rail services, including*
23 *high-speed and conventional intercity rail, commuter rail, and rail*
24 *transit, where the various services are the responsibility of different*
25 *implementing and operating agencies. The strategic plan shall*
26 *identify the coordination in planning and capital investments*
27 *necessary to maximize the opportunities for each of those services*
28 *in providing a cohesive, connected, and easy-to-use system for*
29 *Californians consisting of all of those services, rather than a*
30 *cumbersome set of unlinked individual rail services. The strategic*
31 *plan shall also identify future right-of-way needs of passenger rail*
32 *lines in connection with state and local highway system*
33 *improvements in order to accommodate future rail system*
34 *improvements as those highway improvements proceed to*
35 *implementation, with the objective of avoiding lost opportunities*
36 *by failure to reserve right-of-way capacity for future rail*
37 *improvements. The strategic plan may also include other matters*
38 *that offer similar opportunities for statewide coordination,*
39 *including the efficient movement of goods.*

1 ***(b) The strategic plan shall be developed in consultation with***
2 ***transportation planning agencies and agencies and entities***
3 ***responsible for the various rail and highway systems. The strategic***
4 ***plan shall be submitted to the California Transportation***
5 ***Commission for approval on September 1, 2011, and every five***
6 ***years thereafter on September 1. Amendments to an approved***
7 ***strategic plan may be developed and presented to the commission***
8 ***for approval in the same manner during each five-year period.***

9 ***(c) Upon approval of the strategic plan, the commission, for***
10 ***each transportation project subject to commission approval and***
11 ***implicated by the strategic plan, shall make a determination that***
12 ***the project is consistent with the strategic plan. The commission***
13 ***may approve a project that is not consistent with the strategic plan***
14 ***for good cause, subject to a waiver granted by the secretary.***

15 ***SEC. 3. Section 185020 of the Public Utilities Code is amended***
16 ***to read:***

17 ***185020. (a) There is in ~~state government~~ a the Business,***
18 ***Transportation and Housing Agency the High-Speed Rail***
19 ***Authority.***

20 ***(b) (1) The authority is composed of nine members as follows:***

21 ***(A) Five members appointed by the Governor with the advice***
22 ***and consent of the Senate.***

23 ***(B) Two members appointed by the Senate Committee on Rules.***

24 ***(C) Two members appointed by the Speaker of the Assembly.***

25 ***(2) For the purposes of making appointments to the authority,***
26 ***the Governor, the Senate Committee on Rules, and the Speaker of***
27 ***the Assembly shall take into consideration geographical diversity***
28 ***to ensure that all regions of the state are adequately represented.***

29 ***(c) Except as provided in subdivision (d), and until their***
30 ***successors are appointed, members of the authority shall hold***
31 ***office for terms of four years. A vacancy shall be filled by the***
32 ***appointing power making the original appointment, by appointing***
33 ***a member to serve the remainder of the term.***

34 ***(d) (1) On and after January 1, 2001, the terms of all persons***
35 ***who are then members of the authority shall expire, but those***
36 ***members may continue to serve until they are reappointed or until***
37 ***their successors are appointed. In order to provide for evenly***
38 ***staggered terms, persons appointed or reappointed to the authority***
39 ***after January 1, 2001, shall be appointed to initial terms to expire***
40 ***as follows:***

1 (A) Of the five persons appointed by the Governor, one shall
2 be appointed to a term which expires on December 31, 2002, one
3 shall be appointed to a term which expires on December 31, 2003,
4 one shall be appointed to a term which expires on December 31,
5 2004, and two shall be appointed to terms which expires on
6 December 31, 2005.

7 (B) Of the two persons appointed by the Senate Committee on
8 Rules, one shall be appointed to a term which expires on December
9 31, 2002, and one shall be appointed to a term which expires on
10 December 31, 2004.

11 (C) Of the two persons appointed by the Speaker of the
12 Assembly, one shall be appointed to a term which expires on
13 December 31, 2003, and one shall be appointed to a term which
14 expires on December 31, 2005.

15 (2) Following expiration of each of the initial terms provided
16 for in this subdivision, the term shall expire every four years
17 thereafter on December 31.

18 (e) Members of the authority are subject to the Political Reform
19 Act of 1974 (Title 9 (commencing with Section 81000)).

20 (f) From among its members, the authority shall elect a
21 chairperson, who shall preside at all meetings of the authority, and
22 a vice chairperson to preside in the absence of the chairperson.
23 The chairperson shall serve a term of one year.

24 (g) Five members of the authority constitute a quorum for taking
25 any action by the authority.

26 *SEC. 4. Section 185025 is added to the Public Utilities Code,*
27 *to read:*

28 *185025. The authority shall submit an annual funding plan to*
29 *the California Transportation Commission for approval. Among*
30 *other things, the funding plan shall identify the need for investments*
31 *during the fiscal year to which it applies, and the amount of bond*
32 *sales necessary to accommodate those investments.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, May 21, 2009. (JR11)**

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